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IN THE
COURT OF APPEALS OF INDIANA

IN RE THE TERMINATION OF THE PARENT-CHILD RELATIONSHIP between M.P., S.F., and D.F., children, and LEANNA FITZGERALD, their mother, and DANIEL FITZGERALD, the father of S.F. and D.F.,	)	
LEANNA FITZGERALD and DANIEL FITZGERALD,	)	No. 14A01-0705-JV-232
Appellants-Respondents,	)	
v.	)	
DAVIESS COUNTY DEPARTMENT OF CHILD SERVICES,	)	
Appellee-Petitioner.	)	

APPEAL FROM THE DAVIESS CIRCUIT COURT
The Honorable Jeffrey L. Biesterveld, Special Judge

December 4, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAKER, Chief Judge

Appellants-respondents Leanna and Daniel Fitzgerald bring this consolidated appeal from the trial court's order terminating their respective parental relationships with M.P.,[1] S.F., and D.F. The Fitzgeralds argue separately that there is insufficient evidence supporting the trial court's termination order. Finding no error, we affirm the judgment of the trial court.

FACTS

M.P. was born on April 22, 1997, to Leanna and her then-boyfriend, Jack Phillips. S.F. was born on September 1, 2000, to Leanna and Daniel, who were married on May 4, 2001. D.F. was born to Leanna and Daniel on June 22, 2002.

In 1985, Leanna was in an accident and sustained a serious head injury that caused brain damage. As a result, she suffers from short-term memory problems and chronic headaches. She has an IQ score of approximately 81, placing her in the borderline intellectual functioning range. Leanna did not graduate from high school and her employment history consists of six months with a nursing home and one week with a hotel as a breakfast bar cleaner. She lost both jobs because of arguments with coworkers or her boss.

[1] As will be explained more fully herein, Daniel is the biological father of only S.F. and D.F.; thus, he appeals the termination of his parental relationship with them and does not address Leanna's relationship with M.P.

Daniel was Jack's supervisor, and at some point Jack asked Daniel for a place to stay. Thus, from approximately April 2002 through December 2003, Leanna, Daniel, Jack, and the three children lived together in Washington. Between February 2002 and December 2003, the police were called to the residence on forty-one different occasions because of altercations between Daniel and Jack and/or arguments with the neighbors.

In the fall of 2003, six-year-old M.P. was attending first grade. Her teacher was concerned about M.P.'s academic progress and certain troubling behaviors, including putting her hands on her genitalia and "excessive masturbation." Appellant's App. p. 63, 66, 73-74. At a parent-teacher conference in December 2003, M.P.'s teacher explained her concerns to Leanna, who became emotional and said that she had "other things going on with her own life." Id. at 64. Leanna told the teacher that M.P. had "tried to do things to her little brother," that a friend had recently raped Leanna, that she was on medication, and that it was difficult for her to focus on M.P.'s problems. Id. at 64-65.

On December 8, 2003, a conference was held with Leanna, M.P., and the school's at-risk counselor. M.P. told the counselor that Jack had "touched her bottom between her legs." Id. at 78-79. The counselor reported the matter to Daviess County Child Protection Service (CPS). After the conference, Leanna confronted Jack, who denied the allegations, became very angry, and left the house.[2]

On December 9, 2003, a CPS caseworker interviewed M.P., who described and drew pictures of multiple incidents of sexual molestation perpetrated on her by both Jack and

[2] Jack's parental rights with respect to M.P. were terminated on August 25, 2005.

Daniel. M.P. described one instance in which Leanna was present and became angry when she realized what Jack was doing to M.P. Additionally, M.P. reported that she had seen Jack molesting D.F. and Daniel molesting S.F.

After the interview, the caseworker contacted the Washington City Police Department. The caseworker and a detective interviewed Leanna, who was not surprised that M.P. had stated that Jack had sexually molested her. Leanna also admitted that approximately one year earlier, she had caught M.P. performing oral sex on S.F, explaining that M.P. had learned the technique from Jack and that Leanna subsequently confronted Jack about the incident. Leanna continued to let Jack babysit for the children after the 2002 incident. When Leanna learned that M.P. had also accused Daniel of inappropriate sexual behavior, Leanna became upset and denied that Daniel would molest the children.

On that same day—December 9, 2003—CPS removed all three children from the home and placed them in foster care. At the time of removal, S.F. had severe dental decay that eventually required surgery in 2004. Initially, the children were all placed in the same foster home. On January 20, 2004, however, M.P. was removed from the foster home and moved to another foster home because she had been sexually abusing D.F. and another female child in the home.

Appellee-petitioner Daviess County Office of Family and Children (OFC) filed petitions alleging the children to be Children in Need of Services (CHINS) on December 29, 2003, and on January 7, 2004, the children were declared CHINS. Leanna and Daniel were

ordered to take part in a number of services, including counseling, attending parenting classes, and maintaining the same residence for a minimum of six consecutive months.

On February 15, 2006, the OFC petitioned to terminate Leanna's and Daniel's respective parental rights to the children. A factfinding termination hearing was held on January 3, 4, and 5, 2007, at which it was established that Leanna's opinion regarding whether her children have been sexually abused has been inconsistent. At times, she denied they were abused at all; at other times, she denied they were abused by Daniel; and at still other times, she admitted they were abused by both men.

Leanna said that Daniel was controlling and abusive, emotionally and physically, and that she was afraid of him. On one occasion, he assaulted her with a full bottle of beer, breaking the bottle between her legs and leaving her to pick the broken pieces of glass out of her thighs. She stated that she planned to divorce Daniel but had not done so at the time of the termination hearing. Leanna's therapist testified that her "insight and judgment are limited" because of her impaired cognitive abilities and that "I am not sure she understands how thoughts/perception[s] of events trigger inapprop[riate] behaviors." Appellant's App. p. 842, 846, 859.

The children's therapist testified that M.P. detailed multiple incidents of molestation perpetrated by Jack and Daniel on all three children. In January 2005, the therapist recommended that visitation between D.F. and Daniel be stopped because of a deterioration in D.F.'s behavior. At that time, D.F. was, among other things, eating her feces and other bodily secretions, covering herself with feces, and pulling her hair out and eating it, creating

a bald spot on the back of her head. The therapist also testified that S.F. had reported that Daniel and Jack had molested S.F. and D.F. The children have progressed since their removal from the home.

Dr. Richard Lawlor was a psychologist who evaluated Leanna and Daniel. He testified that neither Leanna nor Daniel recognized that any harm had occurred to the children. Daniel has consistently denied that he abused any of the three children. Dr. Lawlor was concerned that Leanne is unable to provide a safe environment for the children and concluded that he did not believe that the children should be reunified with their parents. He believed that Leanna was in denial regarding the abuse of her children and was troubled that she had not ended her relationship with Daniel, who he believed was a danger to the children. Dr. Lawlor also stated that he believed that attempts to teach safety or parenting skills to Leanna would be ineffective because "why would she accept that there needs to be safety skills learned and a safety plan developed" if she denies that there is a problem. Id. at 624.

Dr. John Ireland was a psychologist who evaluated Daniel. Daniel revealed that he had a history of alcohol abuse and depression and took a personality test, the results of which concerned Dr. Ireland. Dr. Ireland concluded that Daniel may have "explosive behavior or anger," that Daniel's sexual profile should cause "significant[] worry," and that Daniel needed an antidepressant and "very rigorous weekly psychotherapy at a minimum." Id. at 662, 666-67.

Dr. Albert Fink was yet another psychologist who evaluated Leanna and Daniel. Leanna's personality test demonstrated that she was unwilling to admit fault or acknowledge

that certain events had occurred; Daniel's test demonstrated a tendency toward depression, lack of stability, and substance abuse issues. Dr. Fink also reviewed a drawing prepared by M.P. and testified that the sketch was "an egregious example of a highly disturbed child's drawing," was "highly sexualized," and was "one of the most disturbed drawings that I have ever seen . . . ." Id. at 351, 354. Dr. Fink did not advise that the children be reunited with either parent.

The children's guardian ad litem concluded that Daniel had molested M.P. and that Leanna was unable to protect her children from harm. He recommended that Leanna's and Daniel's respective parental rights be terminated.

On March 14, 2007, the trial court terminated the parental rights of Leanna and Daniel, finding in pertinent part as follows:

> 22. [Daniel] and [Leanna] both admitted that [M.P.] told them in October 2002 that [Jack] touched her inappropriately. The parents permitted [Jack] to remain in the home until December 10, 2003.
>
> ***
>
> 25. [Daniel] was assessed by [Dr. Ireland]. Dan was diagnosed with major depression and anger. Testing also showed that the father had traits of pedophilia. Dr. Ireland recommended that Dan needs an antidepressant, but also some very rigorous weekly psychotherapy at a minimum. Dan began treatment but then quit treatment.
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> ***
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> 28. Dan Fitzgerald denied the children have any emotional problems.
>
> 29. Dan Fitzgerald failed to address in therapy the reasons for the removal of the children from his home.
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> 30. Dan failed to follow through with recommendations of experts and therapists.

***

32. Leanna alternately admitted and denied that [Jack] harmed [M.P.], admitted and denied any sibling harm, admitted and denied developmental delays of [D.F.], and admitted and denied dental neglect of [S.F.]

33. Leanna failed to acknowledge or address the emotional needs of her children and continues to waver on the children's need for services.

34. Dr. Fink found Leanna to be unreliable, antagonistic, [and] volatile in relationships. Dr. Fink determined that her prognosis for change is poor. Dr. Fink found that Leanna would need years of work in therapy to address her issues.

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36. Leanna disclosed violence and harm to herself by [Daniel]. Initially, Leanna left [Daniel] and filed for a protective order, but dismissed the order nineteen (19) days later.

37. Mother cannot provide a safe home for the children.

38. The parents failed to demonstrate stability in their own lives, moving five times in three years, evicted once, and have civil judgments for failure to pay debts.

39. [M.P.] is being treated for issues of depression, dissociation, preoccupation with death, sexual acting out and excessive masturbation.

40. Since removal, [M.P.] has progressed. [M.P.] masturbates less frequently. [M.P.] is making educational progress. [M.P.] repeated the first grade and has learned to read.

41. [M.P.] has a supportive foster family and is happy in her foster placement.

42. At the time of removal, [D.F.] was fifty percent delayed in her development.

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45. [D.F.] is in a placement that provides structure and a loving environment.

46. [D.F.] is deeply attached to her foster mother.

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48. Surgery was performed in 2004 to repair [S.F.'s dental decay.]

49. In 2004 [S.F.] continued to talk[] openly about sexual harm by [Daniel] and [Jack]. [Daniel's] visits are voluntarily suspended when [S.F.] regresses.

50. [S.F.] is happy, social and attends full day kindergarten.

51. [S.F.] is thriving in placement and has developed an attachment to his foster parents.

Appellee's App. p. 3-6. The trial court found that the OFC met all statutory requirements and terminated Leanna's and Daniels' respective parental rights to the children. Leanna and Daniel now appeal.

DISCUSSION AND DECISION

The only argument on appeal raised by Leanna and Daniel is that there is insufficient evidence supporting the termination of their parental rights. We will not set aside the trial court's judgment terminating a parent-child relationship unless it is clearly erroneous. In re A.A.C., 682 N.E.2d 542, 544 (Ind. Ct. App. 1997). We neither reweigh the evidence nor judge the credibility of witnesses, and we will consider only the evidence that supports the trial court's decision and the reasonable inferences that may be drawn therefrom. Id. If the evidence and the inferences support the trial court's decision, we must affirm. In re L.S., 717 N.E.2d 204, 208 (Ind. Ct. App. 1999).

We acknowledge that the involuntary termination of parental rights is the most extreme sanction a court can impose on a parent because termination severs all rights of a parent to his or her children. Id. Therefore, termination is intended as a last resort, available

only when all other reasonable efforts have failed. Id. The purpose of terminating parental rights is not to punish the parents but, instead, to protect their children. Id. Thus, although parental rights are of a constitutional dimension, the law provides for the termination of these rights when the parents are unable or unwilling to meet their parental responsibilities. Id.

To effect the involuntary termination of a parent-child relationship, the State must present clear and convincing evidence establishing the following elements:

> (A) one (1) of the following exists:
>
> (i) the child has been removed from the parent for at least six (6) months under a dispositional decree;
>
> (ii) a court has entered a finding under IC 31-34-21-5.6 that reasonable efforts for family preservation or reunification are not required, including a description of the court's finding, the date of the finding, and the manner in which the finding was made; or
>
> (iii) after July 1, 1999, the child has been removed from the parent and has been under the supervision of a county office of family and children for at least fifteen (15) months of the most recent twenty-two (22) months;
>
> (B) there is a reasonable probability that:
>
> (i) the conditions that resulted in the child's removal or the reasons for placement outside the home of the parents will not be remedied; or
>
> (ii) the continuation of the parent-child relationship poses a threat to the well-being of the child;
>
> (C) termination is in the best interests of the child; and
>
> (D) there is a satisfactory plan for the care and treatment of the child.

Ind. Code § 31-35-2-4(b)(2).

In construing this statute, this court has held that when determining whether certain conditions that led to the removal of the children will be remedied, the trial court must judge the parent's fitness to care for the children at the time of the termination hearing, taking into consideration evidence of changed conditions. In re D.J., 755 N.E.2d 679, 684 (Ind. Ct. App. 2001). A parent's habitual pattern of conduct must also be evaluated to determine the probability of future negative behavior. Id. The trial court need not wait until a child is irreversibly harmed such that his physical, mental, and social development are permanently impaired before terminating the parent-child relationship. Id.

Additionally, the trial court may consider the services offered as well as the parent's response to those services. Id. Parental rights may be terminated when parties are unable or unwilling to meet their responsibilities. Ferbert v. Marion County OFC, 743 N.E.2d 766, 776 (Ind. Ct. App. 2001). Also, when determining what is in the best interests of the children, the interests of the parents are subordinate to those of the child. Id. at 773. Thus, parental rights will be terminated when it is no longer in the child's best interests to maintain the relationship. In re B.D.J., 728 N.E.2d 195, 200 (Ind. Ct. App. 2000).

I. Leanna

Here, the record reveals that Leanna was aware that Jack was molesting M.P. but continued to let him babysit for the children for at least one year. Appellant's App. p. 88-89. Leanna then vacillated for years regarding her willingness to admit that the children had been harmed by Jack and Daniel. Leanna argues that she presented evidence that this wavering is normal and should not lead to termination, but this argument is an invitation for us to second-

guess the trial court's interpretation and application of the facts—an invitation we decline. Moreover, even if this reaction is "natural" and "human," it may still be contrary to her children's best interests. Leanna's Br. p. 10-11. Here, her unwillingness to accept that her children have been sexually molested by their fathers is, indeed, contrary to their best interests.

The record also reveals that according to multiple experts involved with this family, Leanna has a history of refusing or being unable to acknowledge the harm to and needs of her children. Appellant's App. p. 835-36, 838, 841-42, 856-58, 872, 880-81, 894, 897, 933, 953, 957, 962. She directs our attention to the testimony of her counselor and her own testimony regarding the fact that at the time of the hearing, the children were under the care of a physician, a dentist, and a counselor. She also attacks Dr. Fink's conclusions regarding her personality. This, however, is also a request that we reweigh the evidence and judge the credibility of witnesses—a practice in which we do not engage when evaluating the trial court's termination of parental rights.

The record reveals that a psychologist who examined Leanna was concerned about her sensitivity to the children's needs, the potential victimization of the children when in her care, and her ability to provide them with a safe environment. Id. at 609. Furthermore, the psychologist was concerned about her commitment to Daniel, who was still living in the home at the time of the hearing, and the safety of the children as long as Daniel continued to be in Leanna's life. Id. at 623. Although she disputes the psychologist's conclusions, there

was adequate evidentiary support for the trial court's conclusion that she is unable to provide the children with a safe environment.

Leanna also contends that there is insufficient evidence supporting the trial court's conclusion that she is unable to provide the children with a stable environment. She testified that since the children were removed from her care, she had held two jobs—one for six months, and the other for one week. Moreover, Leanna moved five times in three years, was evicted once, and had amassed civil judgments for failure to pay debts. She points out that in the period of time leading up to the hearing she had moved only three times in five years, but we must also consider her "habitual pattern of conduct to determine whether there is a substantial probability of future neglect or deprivation." Bester v. Lake County OFC, 839 N.E.2d 143, 152 (Ind. 2005). Here, the trial court properly considered Leanna's past patterns that involved frequent moves and her more recent spotty employment history and financial irresponsibility in concluding that she was unable to provide the children with a stable environment. In our view, that conclusion is not clearly erroneous.

When the children were removed from their parents' care, they had significant problems. S.F. had severe dental decay, D.F. demonstrated significant developmental delays, and M.P. was emotionally handicapped and unable to read. Having spent three years with foster families, all of the children are progressing and doing well. Given the years of horror they experienced while living with Leanna and Daniel and given the progress they have made since they were removed from the home, we can only conclude that the trial court properly found that termination of Leanna's parental rights was in the children's best interests.

II. Daniel

First, Daniel attacks the virtually universal conclusion of the medical professionals involved with this family that he molested the children. He directs us to his own testimony, to inconsistencies in the respective statements and allegations made by the children, and to the fact that no criminal charges were filed against him as support for his argument that no molestation occurred. This, however, is a request that we reweigh the evidence and judge the credibility of witnesses—an invitation we decline. Moreover, we note that the trial court did not make a finding that he molested the children.

Next, he argues that the trial court erroneously found that he failed to admit that the children had suffered harm. As Daniel admits, however, although at times he has acknowledged that the children were molested, he has also made statements to the contrary on a number of occasions. Daniel's Br. p. 5. It is for the trial court to evaluate these inconsistencies, and it was within its purview to conclude that on balance, Daniel has refused to make a genuine acknowledgement of the harm suffered by his children. We will not second guess that conclusion.

Daniel also finds fault with the trial court's finding that he failed to follow through with court-ordered therapy. The trial court found that Daniel "failed to address in therapy the reasons for removal of the children from his home" and that he "failed to follow through with recommendations of experts and therapists." Appellant's App. p. 4. Daniel first sought counseling with Robin Maglinger, but he subsequently quit. Daniel's Br. p. 6. Next, he sought counseling with Jeff Brown, but he also quit attending sessions with Brown.

Appellant's App. p. 179. Thus, the record supports the trial court's conclusion that Daniel failed to follow through with his therapists' recommendations.

Daniel also finds fault with the trial court's conclusion that he failed to demonstrate stability in his life. As we have already found herein, however, the trial court properly concluded that Daniel and Leanna moved multiple times in a small number of years. Thus, we cannot conclude that the trial court erroneously concluded that Daniel could not provide the children with a stable environment.

Next, Daniel complains that the trial court found that the results of psychological testing revealed that he has pedophilic traits. Essentially, he merely attacks Dr. Ireland's interpretation of the results of the psychological testing. It is for the trial court, however, to evaluate Dr. Ireland's testimony, and we decline to second guess that evaluation.

Daniel also argues that the trial court erroneously found that D.F. and S.F.'s behavior regressed while they were in his presence and that, as a result, visitation with the children was suspended. The children's therapist testified that in January 2005, D.F.'s behavior had deteriorated to the point of eating her own bodily secretions and pulling out her hair and eating it. Appellee's App. p. 719. As a result, visitation with Daniel was suspended, after which D.F.'s behavior began to improve "slowly but consistently." Id. at 720. As for S.F., the therapist observed that after the initiation of visits with Daniel, S.F. "experienced a steady decline in his behavior outside of the visits. He slowly began masturbating more frequently as well as sticking toys up his rectum. These behaviors have slowly increased from occasional to daily." Id. at 797. The therapist concluded that S.F. "is clearly being

negatively impacted by the supervised visits with his father" and made a "strong recommendation" that his visits with Daniel be suspended. Id. at 798. It is apparent that there is sufficient evidence in the record supporting a conclusion that the children's behavior regressed while in Daniel's presence.

Finally, Daniel argues that the trial court improperly focused on the condition of the children at the time of their removal instead of their status and the status of Daniel during the three-year interim between removal and the termination hearing. To the contrary, the trial court did examine what had occurred during those years. It concluded that Daniel denied that the children have any emotional problems, that he failed to follow through with therapy and failed to address in therapy the reason for the children's removal, that psychological testing revealed major depression, anger, and pedophilic traits, and that Daniel quit the recommended psychotherapy. The trial court also noted that all three children had improved markedly since being removed from his care and placed in the foster care system. Consequently, we find that the trial court properly examined and evaluated all of the information before it, including the reasons for the children's removal and the progress and behavior of Daniel and the children following removal.

The judgment of the trial court is affirmed.

SHARPNACK, J., and RILEY, J., concur.